IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 41 of 2005
With
COMPANY PETITION No. 42 of 2005
With
COMPANY PETITION No. 43 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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BAZLEY FINVEST LIMITED - Petitioner(s)
Versus
.. - Respondent(s)

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Appearance :
MRS SWATI SOPARKAR for Petitioner No(s).: 1.
MR JITENDRA MALKAN for Respondent No(s).: 1.

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CORAM :	**HON'BLE MR.JUSTICE K.A.PUJ**

Date : 14/07/2005

ORAL JUDGMENT

1. These are the petitions filed by three petitioner Companies for sanction of a Scheme of Amalgamation of the three (the Transferor Companies) with Sun Pharmaceutical Industries Limited (the Transferee Company) under Section 391 read with Section 394 of the Companies Act, 1956. Since all the Transferor Companies are the wholly owned subsidiaries of the Transferee Company, the separate proceedings for the Transferee Company were dispensed with by the previous orders of this Court.

2. All the petitioner Companies are deemed limited companies being the wholly owned subsidiary of a listed public limited Company and belong to the same group of management. All the petitioner Companies are engaged in investment activities.

The amalgamation is proposed for the synergic advantages. The petitions give details of the advantages that would flow by virtue of the amalgamation of these Companies.

3. The proposed Scheme was approved unanimously by the Equity Shareholders as the nominees of the Transferee Company. There are no Secured Creditors in case of any of the Transferor Companies. The only Unsecured Creditor being the Transferee Company has also approved the proposed Scheme. The consent letters of the Equity Shareholders and the Unsecured Creditor were put on record along with respective applications. Hence, the meetings of the Shareholders and Creditors were not required to be held and accordingly they were dispensed with vide the order passed on 07.03.2005 annexed to the petition as Annexure D.

4. After the petitions were admitted, the same were

duly advertised in the Newspapers viz. Indian Express, Vadodara edition and Loksatta-Jansatta, Vadodara edition dated 18th March, 2005 and the publication in the Government gazette was dispensed with as directed in the order dated 11th March, 2005. No one has come forward with any objections to the said petitions even after the publication.

5. Notice of the petition of the Petitioner Transferor Companies was served upon the Official Liquidator attached to this Court. Vide the report dated 27.04.2005, filed by the Official Liquidator, it is observed that the affairs of the Transferor Companies have not been conducted in a manner prejudicial to the interest of their members or to the public interest.

6. Notice of the petition has been served upon the Central Govt. through Regional Director. Shri J.M. Malkan, learned Assistant Solicitor General

appears for the Central Government. He has informed the Court and put on record the letter from the Registrar of Companies of Gujarat dated 21.06.2005 along with the letter of the Regional Director dated 16.06.2005 indicating therein certain observations.

7. Mr. Malkan has submitted that the Regional Director in his communication dated 16.06.2005 has observed that para 9 of the Scheme provides for increase / sub-division / reclassification of Authorised capital from Rs. 130 Crores to Rs. 130.60 Crores thereby an increase of Rs. 60 Lacs for which the Company is required to file Form No. 5 with ROC with necessary Registration Fees in addition to payment of Stamp duty and special resolution for consequent alteration to capital clause of the Memorandum of Association and Articles of Association of the Company as required under Sections 97/94/95/31/16/192 of the Companies Act, 1956. In this connection, Mr. Malkan has

invited the attention of the Court to the recent judgment of the Madras High Court in the matter of **Company Petition No. 88 of 2004 connected with Company Application No. 167 of 2004 (In the matter of Ashok Leyland Finance Limited V/s. Official Liquidator and Others)** and raised objection to the provisions of Clause (9) & 1(F)(iii) of the Scheme.

8. In this connection, Smt. Swati Soparkar, learned advocate appearing for the petitioner Companies has submitted that upon coming into effect this Scheme, Clause 5 of the Memorandum of Articles of Association of the Transferee Company relating to Authorised Share Capital, without any further act, instrument or deed, be and stand altered, modified and amended pursuant to Section 16, 31 and 94 and other applicable provisions of the Act, as the case may be, in the manner set out in Clause 9 of the Scheme. She has, therefore, submitted that this implies that on sanction of the Scheme, the

Authorised Capital of the Transferor Companies be added to the Authorised Capital of the Transferee Company without any separate procedure and without payment of any fees for the purpose. She has further submitted that Section 391 is a complete code in itself. Once a Scheme of arrangement/amalgamation falls squarely within the four corners of the Section, it can be sanctioned even if it involves doing acts for which the procedure is specified in other Sections of the Act. She has further submitted that as established and accepted in number of cases by various High Courts the principle of Single Window Clearance, permits all other formal requirements of the Companies Act, such as approval of change of objects or any other alteration of Memorandum of Association and all other consequential changes or incidental changes required for implementing the Scheme, should be formalized in a single petition.

9. She has further submitted that there is no question of payment of any Stamp Duty on the order under Section 394 in the present instance as no shares are going to be issued by the Transferee Company pursuant to the amalgamation as all the Transferor Companies are wholly owned subsidiaries of the Transferee Company. She has further submitted that on the issue of the payment of the Registration Fees, it has been held by various High Courts that since the Transferor Company had paid the due Registration Fees at the relevant point of time, it is not necessary for the Transferee Company to pay the same again on amalgamation of the Transferor Company to the Transferee Company.

10. In support of her submissions, she relied on the decision of the Andhra Pradesh High Court in the case of **Saboo Leasing (P) Ltd., In re, 117 Company Cases 728** wherein it is held that no separate notice informing the Registrar under S. 95 or 97

of the Companies Act need be given unlike the other cases which do not require the sanctions of the Court, in as much as the Scheme is required to be sanctioned by this Court and such sanction is required to be registered with the Registrar of Companies by filing the certified copy of the order of the Court and hence, there has been no infraction of the provisions of S. 95 or S. 97, as the case may be in any manner.

11. Smt. Swati Soparkar has further relied on the decision of the Allahabad High Court in the case of **Jaypee Cement Ltd., In re., [2004] 62 CLA 329 (All.)** wherein while dealing with the objection raised by the Central Government with regard to one of the conditions mentioned in the Scheme which provides that upon the merger, Authorised Share Capital of JPI shall stand combined with the Authorised Share Capital of JPC, the Court has observed that according to the Regional Director, this amounts to increase of the authorised capital

of JPC, which cannot be done without paying the requisite fee/stamp duty to the Government. In reply to this objection, it was submitted on behalf of the learned Counsel appearing for JPC that the fee/stamp duty is nominal and has a maximum limit which the JPC is prepared to pay. But the requisite fee has already been paid on the authorised capital of JPI and merely because of its merger with JPC, there is no reason why the same fee should be paid again by JPC on the same authorised capital. The Court has further observed that the submission has force and no good reason has been shown why the two merged Companies should be required to pay duty again on the same authorised capital on which duty has already been paid by the JPI. The Court has further observed that regarding the increase of authorised share capital by merger of the authorised capital of the two Companies, an order can be passed under Section 391 of the Act itself. The Court has also referred to the decision of the Bombay High Court

in the case of Vasant Investment Corporation Limited V/s. Official Liquidator, [1981] 50 Company Cases 20 and the decision of this Court in the case of Manekchowk & Ahmedabad Manufacturing Co. Ltd., In re. [1970] 40 Company Cases 819 and also the decision of the Bombay High Court in the case of PMP Auto Industries Limited., In re., [1992] 7 CLA 17 and based on the said decisions, the Court has overruled the objections raised by the Regional Director.

12. Smt. Swati Soparkar has further relied on the decision of the Delhi High Court in the case of **Hotline Hoi Celdings (P.) Ltd., In Re., [2005] 65 CLA 72 (Delhi)** wherein it is observed that in case of a merger like this, where it is provided that the Share Capital of the Transferor Companies become the authorised capital of the Transferee Companies, no such payment of fee to the Registrar of Companies or Stamp Duty to the State Government is payable. The Court has further observed that

this issue is no more res integra and stands settled by series of judgments of various High Courts. She has, therefore, submitted that the objection raised by the Regional Director is not sustainable.

13. Mr. Malkan has submitted that another objection raised by the Regional Director is that the Transferee Company has not paid fees on Form No. 5 under Section 97 for increase in Authorised Capital in the past from Rs. 110 Crores to Rs. 130 Crores along with interest thereon under Section 611 of the Companies Act, 1956. The capital was increased on 28.08.2002. In this connection, Smt. Swati Soparkar has submitted that this issue also pertains to the payment of registration fees on increase in the Authorised Capital of the Company previously. She has further submitted that the issue arises out of the similar contention taken by the Transferee Company in case of merger of M.J. Pharmaceuticals Limited with the Transferee

Company as per the BIFR order. She has submitted that in a proceeding under the Sick Industrial Companies (Special Provisions) Act, 1985, the BIFR by its order dated 17.05.2002 in Case No. 309 of 2000, sanctioned Scheme of Amalgamation / merger of M.J. Pharmaceutical Ltd., with Sun Pharmaceutical Industries Ltd. Consequent thereupon, the Board of Directors of the Transferee Company, namely, Sun Pharmaceutical Industries Ltd. passed certain Resolutions and the issue arose as to whether consequent upon the Scheme being duly sanctioned by BIFR, does the authorised capital of 20 crores of the Transferor Company get added to and merged with the authorised capital of 110 crores of the Transferee Company so as to result in the authorised capital of the Transferee Company becoming 130 crores ? Smt. Swati Soparkar has submitted that Under Clause 1 of the Scheme, the undertaking of the Transferor Company shall, with effect from the transfer date and without any further act or deed,

be deemed to have been transferred and vested in the Transferee Company and the Transferor Company shall be deemed to have been amalgamated with the Transferee Company. Under Clause 2b of the Scheme, the undertakings of the Transferor Company shall include all rights, privileges, powers and authorities and all properties movable or immovable, real, corporeal or incorporeal in possession or reversion, present or contingent of whatsoever nature and whatsoever situated including in particular all licenses and liberties, patents, trade marks, ... rights and benefits of all agreements and other interest including rights and benefits under various Schemes of different taxation laws as may belong to or be available to the Transferor Company, ... all debts, liabilities and duties of the Transferor Company and all other obligations of whatsoever kind including liabilities for payment of gratuity, pension benefits, provident fund or compensation in the

event of retrenchment. She has further submitted that under Clause 8 of the Scheme dealing with accounting treatment of assets, liabilities and reserves of the Transferor Company, the reserves of the Transferor Company will be merged with those of the Transferee Company in the same form as they appear in the financial statements of the Transferor Company vide clause 8 (i). Clause 11 of the Scheme provides that, upon the Scheme being sanctioned, the Transferor Company shall stand dissolved without winding up on the effective date and the effective date has been defined to mean the date on which the last of the approvals specified in Clause 10 of the Scheme are obtained. She has further submitted that the Transferor Company has already paid all the necessary fees and charges to the Registrar of Companies, Maharasahtra and has also paid the necessary stamp duty to the Stamp Authorities under the provisions of the Bombay Stamp Act, 1958.

14. Smt. Swati Soparkar has further submitted that under Section 211(1) of the Companies Act, every balance sheet of a Company shall give a true and fair view of the state of affairs of the Company as at the end of the financial year. As per Section 211(3A) of the Act, every profit and loss account and the balance sheet of the Company shall comply with the accounting standards. The expression 'accounting standards' under Section 211(3C) of the Act means the standards of accounting recommended by the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949 (38 of 1949) as may be prescribed by the Central Government in consultation with the National Advisory Committee on Accounting Standards established under Sub-section (1) of Section 210A provided that the standards of accounting specified by the Institute of Chartered Accountants of India shall be deemed to be the Accounting Standards until the accounting standards are prescribed by the Central

Government under this sub-section. The Central Government has not yet prescribed the accounting standards, and hence the standards of accounting specified by the Institute of Chartered Accountants of India shall, in terms of the above proviso, be deemed to be the Accounting Standards in a case as the present one. Under the definition paragraph of Accounting Standards (AS-14) issued by the Institute of Chartered Accountants of India, amalgamation means an amalgamation pursuant to the provisions of the Companies Act, 1956, or any other statute which may be applicable to the Companies, as, for instance, SICA, under which the said Scheme has been sanctioned by BIFR. The Accounting Standards for amalgamation – AS 14 – lays down in para 33 that, in preparing the transferee Company's financial statements, the assets, liabilities and reserves (whether capital or revenue or arising on revaluation) of the transferor Company should be recorded in the Transferee Company's financial

statements at their existing carrying amounts and in the same form as at the date of the amalgamation. The balance of the profit and Loss Account of the transferor Company should be aggregated with the corresponding balance of the transferee Company or transferred to the General Reserve, if any. She has further submitted that the Capital structure of a Company is, by law, required to be shown on the left side of the balance sheet under the heading “Liabilities”. The Transferee Company is, therefore, required to show the Capital Structure (liabilities) of the Transferor Company in its balance sheet as on the effective date. She has, therefore, submitted that the addition of authorised capital of the Transferor Company into the authorised capital of the Transferee Company, taken along with the transfer of all the assets, liabilities and stock of the former Company into the latter Company is, indeed, the paramount object and the very raison d'etre of merger or amalgamation, because the

basic concept of both these terms is virtually the same. These terms are almost synonymous and often used interchangeably. The Country's fast changing economic scenario and the changing trends in the corporate world have been, in no small measure, the result, inter alia, of a spate of mergers and acquisitions. Corporate mergers and acquisitions have, indeed, been ushering radical changes for the better in the economic and industrial environment of the country. She has further submitted that the above integration is the resultant sequiter flowing ipso facto and without anything more, from the merger/amalgamation under the sanctioned Scheme and the impact thereon of the relevant statutory provisions including those of the Companies Act, the Sick Industrial Companies (Special Provisions) Act and the Accounting Standards (AS-14) of the Institute of Chartered Accountants of India, the Transferee Company, should not, as a result of the merger, be made to pay fees or stamp duty once again on the

increase in its authorised capital by 20 crores. The authorised capital stands, ipso facto, increased to 130 crores without any further acts, deeds or things required to be done by the Transferee Company.

15. Mr. Malkan has further submitted that the third objection raised by the Regional Director is that a complaint was received by ROC against the Transferee Company from T.K. Sashidaran and M. Narayani Kutty of Cochin and reply has been sent to the complainant by the Company as informed. In this connection, Smt. Swati Soparkar has submitted that the Company has already sent necessary replies to the said shareholders. Further, it has been also pointed out that the same is not relevant so far as the proposed Scheme is concerned as the rights of those shareholders are not in any way affected because of the Scheme.

16. After having heard learned advocates appearing for

the respective parties and after having gone through the authorities cited before the Court and after having perused the relevant statutory provisions and the accounting standards, the Court is of the view that the objections raised by the Regional Director are not sustainable and even otherwise, all these issues have been settled by various High Courts. The reliance placed by Mr. Malkan on the decision of the Madras High Court in the matter of M/s. Ashok Leyland Finance Ltd. has no relevance to the facts of the present case as in that case, when the issue was raised before the Court that under the Scheme if approved, the authorised capital of the transferor Company will get merged with the authorised capital of the transferee Company and on such merging of the authorised capital necessary registration fee for the increase in the authorised capital of the transferee Company must be paid, in compliance of the provisions of Sections 94 to 97 of the Companies Act, and that the Companies Act do not

recognise the Scheme authorising such increase in the share capital of the Transferee Company, the learned Counsel for the petitioner before the Madras High Court has made the statement before the Court that the Transferee Company would pay, on the Scheme of amalgamation approved by the High Court of Bombay, the necessary fee under section 97 of the Companies Act on the increased Share Capital of the Transferee Company and the Court has, therefore, taken the view that the legal objections, having been answered by the learned counsel for the Transferor Company, the order sanctioning the Scheme was passed by the Madras High Court. In that case, on concession of the learned counsel, the Court has passed the order and hence, this cannot be cited as a precedent. No other contrary decision has been pointed out by Mr. Malkan. On the contrary, judgments relied on by Smt. Swati Soparkar are clearly on the point and they have uniformally taken the decision that no such Stamp duty or

Registration charges are required to be paid on the increase of Authorised Share Capital of the Transferee Company on amalgamation or merger. Thus, after having gone through the objections and submissions, the Court is satisfied that the observations made by the Registrar of Companies do not survive and the amalgamation would be in the interest of the Companies and their members and Creditors. Prayers in terms of paragraph 16 (A) in case of all the petitions are hereby granted.

17. The petitions are disposed of accordingly. So far as the costs to be paid to the Asst. Solicitor General is concerned, I quantify the same at Rs.3,500/- per petition. The same may be paid directly to Shri J.M. Malkan.

[K.A. PUJ, J.]

Savariya